

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Hiram D. Davies; J. W. Hammock; Brian J.  
Hedges

**CASE 76D-0476-R-2023**  
76D 216006-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claim 76D 216006-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received issue

remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Further proceedings are not necessary to resolve the issue remarks on this claim. However, for organizational purposes, this claim is consolidated into Water Court Case 76D-0476-R-2023.

### **FINDINGS OF FACT**

1. Claim 76D 216006-00 appeared with the following issue remarks:

CLAIM WAS NOT INCLUDED IN THE BASIN 76D TEMPORARY PRELIMINARY DECREE ISSUED 03/22/84.

CLAIM FILED LATE 06/27/96. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 5/1/2019, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY HIRAM DAVIES.

2. As of the date of the issuance of this Master’s Report, Hiram Davies is a co-owner of the above-captioned claim according to the DNRC database.

3. The issue remarks regarding the previous decree and the late-claim status are notice remarks which have served their purpose.

4. The issue remarks should be removed from the claim.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

### **CONCLUSIONS OF LAW**

1. The evidence in the record provides the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Hiram D. Davies  
216 E Lincoln St  
Bozeman, MT 59715

J. W. Hammock  
PO Box 141  
Fortine, MT 59918

Brian J. Hedges  
2910 NE Aurora Dr  
Hillsboro, OR 97124

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 216006-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Late Claim:** B

**Owners:**

J W HAMMOCK  
PO BOX 141  
FORTINE, MT 59918

HIRAM D DAVIES  
216 E LINCOLN ST  
BOZEMAN, MT 59715

BRIAN J HEDGES  
2910 NE AURORA DR  
HILLSBORO, OR 97124

**Priority Date:** JULY 6, 1920

**Enforceable Priority Date:** JUNE 30, 1973

CLAIM FILED LATE 06/27/96 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF LAUGHING WATER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENE	32	35N	25W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** ATKINSON-CURTIS DITCH

WATER DIVERTED FROM UNNAMED TRIBUTARY OF LAUGHING WATER CREEK IS CONVEYED TO LAUGHING WATER CREEK WHICH IS USED AS A NATURAL CARRIER TO A SECONDARY POINT OF DIVERSION IN THE SWSENE SEC 32 TWP 35N RGE 25W LINCOLN COUNTY.

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2NW	32	35N	25W	LINCOLN
2			S2SW	29	35N	25W	LINCOLN

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

216006-00

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